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ABSTRACT

The school principal has an affirmative duty to be informed and to fully inform those under his or her supervision regarding the use of copyright. The present Copyright Law of 1978 and its key guidelines are reviewed in this paper, with a focus on the copyright law as it applies to computer software programs, videotaping, and photocopy. Recommendations are offered for the principal in each of these areas. Usage guidelines for teachers and a proposed school district software policy are also included. (12 references) (LMI)

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A Legal Memorandum

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The Copyright Law: New Technology and Today's Principal

> The Congress shall have power . . . To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writing and discoveries.
>
> **Article I, Section 8**
> **United States Constitution**

Copyright and the need for supportive laws to protect the legitimate rights of authors and inventors in a democratic society is an easy concept to understand. Legislation supporting the exclusive right to a publication, production, or similar work exists to "foster the creation and dissemination of intellectual works for the public welfare . . . (and) to give creators the reward due them for their contribution to society."[1] Balancing this entitlement is the concern that the primary rationale of the copyright commentary in the Constitution was not merely to benefit the authors and inventors, but to advance society and the public welfare through individuals and institutions, including the public school.[2]

Principals, teachers, and students should both appreciate and respect the rights of these authors and inventors and recognize that these contributions, within the law, can and should be utilized to advance education and the society in which we all live.

As the educational leader of the school, the principal clearly is responsible for informing those in the school about appropriate and inappropriate uses of material duplication, whether that duplication deals with photocopying, or with contemporary technological issues such as videotaping or computer programs. Failure to provide such information may lead to legal action based on the doctrine of contributory infringement.[3]

Essential to this doctrine is the Supreme Court definition of an infringer as a person who "was in a position to control the use of copyrighted works by others and has authorized the use without permission of the copyright owner."[4] Authorization, however, does not mean direct approval and an infringer such as a principal, who knows illegal actions might be occurring, cannot use lack of knowledge as a defense. As Soma and Pringle note, "The principle is well-established that one who is not directly involved in copyright infringement may be liable if he had knowledge of the infringing activity and was in a position to control it."[5] Therefore, it is an affirmative duty of the principal to be informed and to fully inform those under his or her supervision regarding the use of copyright.

This *Memorandum* will review the present copyright law and its key guidelines and focus particularly upon the act as it applies to the areas of computer programs, videotaping, and photocopy, with recommendations for the principal in each of these areas.

The Copyright Law of 1978: The Fair Use Doctrine

The Copyright Law of 1978, signed by President Gerald Ford on October 19, 1976, established guidelines to provide for the "fair use" of a copyrighted work against which potential infringement might be measured. Essentially, the fair use doctrine permits certain uses of a copyrighted entity without the copyright holder's permission.

The four basic criteria used to determine whether an action violates the Copyright Law are:

1. The purpose and character of the use, including

whether such is of a commercial nature or is for non-profit educational purpose

2. The nature of the copyrighted work (greater latitude is given the use of factual as opposed to fictional material)
3. The amount and "substantiality"[6] of the work used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for or value of the copyrighted work.

While it is difficult to precisely define what may or may not be appropriate, one author succinctly suggests that fair use applies to situations in which **all** of the following elements are present: "the amount of material copied or used is a small part of the work from which it is taken, no profit is made from the use, the economic loss to the copyright holder is not significant, the material was not originally published for educational use, and there is no intent to republish or display publicly. Further, a claim of fair use always presupposes good faith and fair dealing by anyone asserting it."[7]

It is against these four criteria and appropriate commentary which the issues of concern will be addressed.

Computer Software

The utilization of computers and computer software has revolutionized teaching and has played a major role in the technological advancement principals may choose to utilize in activities such as budgeting or scheduling. While these remarkable tools offer great service in terms of efficiency and effectiveness, careful attention to the legitimate rights of the owners/investors of the software is necessary. Those who hold copyright will be particularly concerned about the potential economic loss that might occur in case of certain violations.

The Copyright Act (Section 117) permits the *limited* copying of computer programs provided:

1. Such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner
2. That such new copy or adaptation is for archival purposes.

Further, any exact copies prepared in accordance with the provisions of this section (117) may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred **only with** the authorization of the copyright owner.

The implications of these statements for utilization of software within the school setting appear to be fairly clear and forthright regarding two essential practices, "booting" and "networking."

In "booting," a program is loaded into the memory of a microcomputer for the student, teacher, or administrator to work on. Such a practice is expected and a back-up copy may be made for archival purposes. But should the *same* program copy be loaded into the memory of a large number of microcomputers, *without a site or program license agreement* to do so, copyright infringement may occur. Such a violation is tied to the fact that this process, at minimum, would diminish program sales.

Schools are therefore encouraged to carefully check license agreements and seek to buy "bundles" (large sets of programs) that may be used at a cost far below that of individual copies.

In "networking," a program may be placed into the memory of many machines through a data communication network. Again, unless approved by the copyright holder through program or site license agreement, copyright infringement may be alleged as directly affecting the economic impact of the copyright holder. Although not all the steps noted in the accompanying policy guidelines are exact for all schools and school districts, they should be carefully studied and in appropriate form be disseminated for all school system employees.[8]

Warning

The owner of the copyright in this motion picture has authorized its use in this cassette for the purpose of private home viewing without charge of any kind. Any other use of this cassette including any copying, reproduction, or performance of any of the material in it, is an infringement of copyright and may result in civil liability or criminal prosecution as provided by law.

Copyright Notice
Movie Rental

Videotapes

The videotape has become an effective teaching device in a society accustomed to receiving information through electronic visual media. With the multitude of videotapes available in the marketplace for rental or pur-

chase, the opportunities to use videotapes as a primary instructional format or to use them to supplement classroom lectures are virtually limitless. The chief legal concern for school personnel is whether the use of videotapes for instructional purposes presents any copyright problems.

The Copyright Act grants to a copyright owner of a videotape the exclusive right to reproduce, distribute, perform, or display the work.[9] Notwithstanding these exclusive rights, a teacher is permitted to display a videotape "in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction," provided the videotape has been "lawfully made."[10]

The Copyright Act attempted to balance protection of the intellectual property rights of a copyright owner with the educational interests of teachers and students. Two concepts are important for the teacher to understand in using videotapes in order to avoid Copyright Act violations: "lawfully made" copy and "face-to-face teaching activities."

1. Lawfully made copy—For purposes of classroom use of videotapes, the Copyright Act looks at how the videotape copy being used by a teacher came into being rather than who actually owns the videotape. A teacher who makes his or her own copy of a videotape

Proposed School District Software Policy

I. PURCHASING

1. Where feasible, the School District shall purchase one copy of each program in its curriculum for each computer within the District, unless a site licensing agreement can be obtained from the software producer.
2. Preference in purchasing will be afforded to software manufacturers who will enter into multiple computer licensing agreements or will provide the educational institution multiple copy discounts, provided that such programs are compatible with the educational policies of the School District.

II. SUPERVISION

1. The School District shall designate one administrative level employee to serve as Assistant Superintendent for Computer Education. This administrator shall be responsible for monitoring School District compliance with all applicable copyright laws and licensing agreements and this policy.
2. The computer facilities of the School District shall be under the direct supervision of the building principal and such other administrative or certificated personnel as he or she may appoint.
3. There shall be at least one copy of each regularly used instructional program for each computer in use in a classroom, unless applicable license agreements allow multiple computer use of a single program.
4. No one shall use any software other than that provided by the School District on the computer facilities of the School District without the permission of the principal or his or her designee.
5. All School District software shall be used in School District computer facilities only, unless permission is given by the principal or his or her designee. Such permission shall only be granted upon reasonable assurances that the intended off-campus use is authorized.
6. All software of the School District will be inventoried and the principal or his or her designee shall be prepared to account for its location at any given time.
7. The rules and policies of the School District as set forth herein shall be provided every student at the beginning of each course in computers or in which computers are used for instructional purposes.
8. The principal or his or her designee shall affirmatively supervise computer usage in the school building to ensure compliance with this policy.
9. Copies of all license agreements shall be maintained at the District Administrative Office and at each building where the program is in use.

owned by another person or a copy of a rental tape would not have a lawfully made copy, unless permission to make and use such a copy had first been secured from the copyright owner. Even if someone other than the teacher made the unlawful copy, a teacher could still not use it in the classroom if he or she had reason to believe the copy had not been lawfully made. Videotapes owned or rented by a teacher can be used in face-to-face teaching, provided they have been lawfully made. A videotape from off-the-air educational television can be used for seven days from the date of transmission, but must then be erased or destroyed.[11]

2. Face-to-face teaching—Unless otherwise permitted by the copyright owner, a videotape must be used in a classroom setting as part of an instructional activity. In other words, the use of a videotape in a classroom solely for entertainment purposes or the use of a videotape for a group of students in other than a face-to-face teaching setting would not fit within this category.

The Copyright Act imposes significant civil and criminal penalties for violations of the Act and those penalties could be imposed on the classroom teacher, the school administrator, or even the school district. Although the Copyright Act provides for waiver of penalties in certain situations where the educator had no reasonable belief that a copyright violation had taken place, it should be doubtful 15 years after the Copyright Act's passage whether any educator can claim ignorance of the Act's provisions regarding unlawful use of copied material.

The teachers' or administrators' professional standing in the educational community, if not their very employment status, may well depend on their understanding of the Copyright Act's provisions regarding use of videotapes in the classroom.

Suggestions for Videotape Use

1. Adopt and circulate on an annual basis a school policy on the use of classroom videotapes, including a statement that the videotape must be related to the classroom instruction.
2. Identify courses in which videotapes are used and have the school or school district purchase copies for instructional use.
3. Appoint a person to check that each videotape used by a teacher is a lawfully made copy, or is one purchased by a school or school district for instructional use.
4. Review copies of videotapes in the school or school district's possession to determine that they are lawfully made.
5. Include violations of the Copyright Act as part of the school's disciplinary policy.

Photocopying

Although the impact of computer software and videotapes is considerable, the need to be alert to the essential provision of the Copyright Law regarding photocopying should be of equal concern.

While a prior memorandum[12] dealt with this issue in depth, the principal should carefully review this and other documents and place a copy of the attached chart on the copying machine(s) of the school as an affirmation of the responsibility to inform the staff about the law. In addition, principals may provide the staff with inservice speakers who can clarify and address other issues related to the Copyright Law.

Endnotes

1. General Guide to the Copyright Act of 1976. Washington: The Library of Congress, Ch. 1, p. 1.
2. Thomas C. Brennan, "Provisions for Library Photocopying in the New Copyright Act" in *The Copyright Dilemma*, Herbert S. White, ed. Chicago: American Library Association 1980, p. 19.
3. John Soma and Dwight Pringle, "Computer Software in the Public Schools," 28 *Education Law Reporter* 315, 1986.
4. Sony Corp. v. Universal City Studios, 104 S.Ct. 774,786.
5. Soma and Pringle, p. 320.
6. New Era Publications Int'l v. Carol Publishing Group, 904 F.2d 152,158 (2nd Cir.) *cert. denied* 111 S.Ct. 297 (1990).
7. Michael Smith, "Classroom Use of Copyrighted Materials," 43 *Education Law Reporter* 1 (1988), p. 2.
8. Soma and Pringle, pp.323-24.
9. 17 U.S.C. sec. 106.
10. 17 U.S.C. sec. 110.
11. 17 U.S.C. sec. 118.
12. Steve Permuth and Ralph Mawdsley, "The Copyright Law: Implications for the Principal." *Legal Memorandum*, September 1981.

This Legal Memorandum was written by Steve Permuth, professor and dean of the College of Education at Cleveland State University, and Ralph Mawdsley, administrative counsel and vice president of human resources, Liberty University.

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Simplified Usage Guidelines Indicating Fair Use for Teachers*

Material	Fiction Nonfiction Textbooks Theses	Stories Essays Anthologies Encyclopedias	Poetry	Periodicals	Cartoons Charts Pictures	Lectures Sermons Speeches
Instructor's Copy	1 chapter	1 story or essay	1 article	1 article	1 per book or issue	1 per book or issue
Multiple Copies	1,000 wd. excerpt or 10%	2,500 wd. excerpt or story	250 wd. excerpt or poem	2,500 wd. excerpt or essay	same as above	same as above
Cumulative Use per Class per Term	2	2-3	2	3	2-3	2-3

*The law permits a combination of nine instances of any of the above usages per course per term.

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